APPENDIX A.

Opinion.

United States Court of Appeals, for the Ninth Circuit.

Thurston, Motor Lines, Inc., Plaintiff-Appellant, v. Jordan K. Rand, Ltd., Defendant-Appellee. No. 80-5449, DC No. 80-865-AAH.

Filed July 27, 1982.

Appeal from the United States District Court for the Central District of California, A. Andrew Hauk, District Judge, Presiding, Argued and Submitted November 3, 1981.

Before: Choy and Nelson, Circuit Judges, and Ingram,* District Judge.

Choy: Circuit Judge.

This is a simple contract-collection action which normally would have been brought in state court. Thurston Motor Lines seeks to recover $661.41 in motor freight charges that Jordan K. Rand, Ltd. allegedly promised to pay. Thurston Motor sued in federal court solely because the charges agreed upon in the shipping contract complied with the rate and tariff provisions of the Interstate Commerce Act, 49 U.S.C. §§ 10701-10786. The district court held that this tangential relationship to federal law cannot support federal-question jurisdiction under 28 U.S.C. § 1337.[1] We agree.

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*The Honorable William A. Ingram, United States District Judge for the Northern District of California, sitting by designation.

[1]Most cases on federal-question jurisdiction concern 28 U.S.C. § 1331. The statutory test under both § 1331 and § 1337 is whether the case "arises under" federal law. We make essentially the same inquiry in both instances. Carlson v. Coca-Cola Co., 483 F.2d 279, 280 n.1 (9th Cir. 1973).

I

The precise limits of federal-question jurisdiction are uncertain. *See, e.g., Town of Greenhorn v. Baker County*, 596 F.2d 349, 351 (9th Cir. 1979). We have, however, recognized two requirements: "plaintiffs must show that the federal question was 'well-pleaded' and that the claim arose 'directly' under federal law." *Id.*, citing *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d 1072, 1074 (9th Cir. 1976).

"Under the 'well-pleaded complaint' requirement, federal jurisdiction exists only where the plaintiff would be required to plead and prove a proposition of federal law to win a default judgment." *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d at 1074 (citations omitted). Neither party disputes that state law governs what must be alleged in order to recover for the alleged breach of contract. The critical allegations made by Thurston Motor, which seem the type usually made in a state contract-collection action, are that Rand, Ltd. contracted with Thurston Motor to transport certain goods for a set fee, Thurston Motor transported the goods, and Rand, Ltd. refused to pay as promised. Thurston Motor has not identified and we cannot readily discern any proposition of federal law that a court need confront in deciding what, if anything, can be recovered.[2]

Even if in order to win a default judgment Thurston Motor would have to mention that the parties set the shipping fee in accordance with the Act, the case would not arise *directly* under federal law. We can discern no bright line to determine when a plaintiff satisfies this second requirement for federal-question jurisdiction. *See Town of Greenhorn v. Baker County*, 596 F.2d at 352. Instead, we have inquired

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[2]We do not, of course, decide whether a carrier could identify a well-pleaded proposition of federal law in some future case.

generally whether the claim is federal in nature, *Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Comm'n*, 588 F.2d 1216, 1226-27 (9th Cir. 1978), *cert. denied*, 444 U.S. 826 (1979), or whether federal law is basic or collateral to the claim, *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d at 1074. Thurston Motor's claim relies on state contract law and has at most a collateral relationship to the Interstate Commerce Act.

II

Although we find the lack of federal-question jurisdiction obvious, controlling precedent seems to suggest the opposite result at first glance.

The most troublesome case is *Louisville & Nashville Railroad v. Rice*, 247 U.S. 201 (1918). In *Rice*, the Supreme Court found federal-question jurisdiction over a suit to recover $145 allegedly due the carrier for the shipment of livestock interstate under tariffs regulated by the Interstate Commerce Act. A fact we believe essential to the finding of jurisdiction is that the parties had an understanding requiring the carrier to assess *all* charges immediately upon delivery of the livestock. This arrangement enabled the shipper to include the transportation costs in the price at which it sold the livestock. The dispute in *Rice* resulted from the carrier billing the shipper after the delivery and sale for an additional $145 to cover disinfecting the freight cars. Though contrary to the parties' understanding, the additional charge complied with lawful tariffs.

The discrepancy between the parties' understanding and the lawful tariffs is important because unlike the well-pleaded complaint in the case before us, the one in *Rice* could not have alleged that the shipper agreed to pay the amount sought. The carrier there had to rely exclusively on

the Act to override the parties' understanding. *Rice* therefore was not a simple contract-collection action.

Distinguishing between claims that must rely on the Act, as in *Rice*, and those that rely on the parties' agreement, as in the case before us, conforms to the overriding purpose of the Interstate Commerce Act. Congress sought to prohibit carriers from charging different shippers different fees. *Louisville & Nashville Railroad v. United States*, 282 U.S. 740, 749 (1930); *Farley Terminal Co. v. Atchison, Topeka and Santa Fe Railway*, 522 F.2d 1095, 1097 (9th Cir.), *cert. denied*, 423 U.S. 996 (1975). We would not further this end by asserting jurisdiction over Thurston Motor's action to collect a properly-agreed-upon shipping charge.

The Court in *Rice* did not focus on the discrepancy between the understanding and the tariffs in finding jurisdiction. However, our conclusion about the importance of the discrepancy is supported by the only Supreme Court decision which both cites *Rice* as the support for a finding of jurisdiction and discusses a carrier's ability to collect lawful charges. *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516 (1939), concerned a new tariff properly filed with the Interstate Commerce Commission that required shippers to pay for the installation of special grain doors on box cars used to ship grain. In the past, carriers had borne the expense. The shipper in *Lowden* objected to the new tariff, notified its carrier prior to the shipment that it would not pay for the installation, and then refused to pay $374 owed under the tariff. The Supreme Court focused on the discrepancy between the possible understanding of the parties and the new tariff, even framing the issue to be "whether a carrier's charges for services, actually utilized by a shipper and authorized by a tariff requiring prior arrangements or services, are collectible when the services are rendered on orders, preceded or accompanied by denials of legal liabil-

ity." *Id.* at 517. The Supreme Court has never suggested that *Rice* supports jurisdiction outside this context. *See also Roco Worldwide, Inc. v. Constellation Navigation*, 660 F.2d 992, 994 (4th Cir. 1981) (construing *Rice* to involve an agreed-upon undercharge).

We can find no other adequate ground for the jurisdictional holding in *Rice*. The only possibility suggested in *Rice* is that:

> The Interstate Commerce Act requires carrier to collect and consign to pay all lawful charges duly prescribed by the tariff in respect of every shipment. Their duty and obligation grow out of and depend upon that act.

247 U.S. at 202. *See also Southern Pacific Transportation Co. v. Commercial Metals Co.*, 50 U.S.L.W. 4442, 4444 (U.S. Apr. 27, 1982). But the existence of a federal duty to collect lawful charges does not mean that the carrier can bring a simple contract-collection action in federal courts. As long as state courts entertain such lawsuits, the carrier can satisfy its duty without coming into federal court. We understand the federal duty to collect to give rise to federal-question jurisdiction only over lawsuits against carriers which do not collect proper charges.

Unless the Court based its finding of jurisdiction on the discrepancy between the parties' understanding and the lawful tariff, we doubt that *Rice* is still good law. The term "arising under," though once construed expansively, has taken on a narrower meaning.[3] As the Supreme Court noted in its landmark decision, *Gully v. First National Bank*, 299

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[3]Many scholars have analyzed the change. *See, e.g.*, Cohen, *The Broken Compass: The Requirement that a Case Arise "Directly" Under Federal Law*, 115 U. Pa. L. Rev. 890 (1967); Mishkin, *The Federal "Question" in the District Courts*, 53 Colum. L. Rev. 157 (1953); Bergman, *Reappraisal of Federal Question Jurisdiction*, 46 Mich. L. Rev. 17 (1946).

U.S. 109, 113 (1936): "Looking backward we can see that the early cases were less exacting than the recent ones in respect of some of these conditions [for federal-question jurisdiction]."[4] Rather than conclude that *Rice* is one of the outdated "less exacting" cases, we choose to construe *Rice* as holding only that federal-question jurisdiction exists over claims by a carrier for nonpayment of lawful fees when the parties had an understanding or agreement inconsistent with tariffs set in compliance with the Interstate Commerce Act.

A second troublesome precedent, *White v. Atchison, Topeka & Santa Fe Railway*, 149 F.2d 919, 920 (9th Cir. 1945), contains the statement: "Since interstate commerce laws are involved, the district court had jurisdiction . . . ." But the jurisdictional holding in *White* is distinguishable on the same ground as that in *Rice*. The carrier sued to collect from the shipper an amount required by a lawful tariff but contrary to their agreement. For the reasons given above, federal jurisdiction turns on the existence of the discrepancy.

III

We find no adequate basis here for jurisdiction under 28 U.S.C. § 1337. Apparently, the Seventh Circuit Court of Appeals would decide this case differently. *Madler v. Artoe*, 494 F.2d 323 (7th Cir. 1974). *See also Maritime Service Corp. v. Sweet Brokerage De Puerto Rico, Inc.*, 537 F.2d 560, 562 (1st Cir. 1976) (under Shipping Act); *George Transport and Rigging Co. v. International Publications*

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[4]Because *Gully* factually resembles the case before us, a brief review of the holding there is instructive. The defendant had allegedly breached a contractual duty to pay. "There [was] no necessary connection between the enforcement of such a contract according to its terms and the existence of a controversy arising under federal law." 299 U.S. at 114. Consequently, the Court found, as we do here, no federal-question jurisdiction.

Equipment Corp., 425 F. Supp. 1351, 1352 n.2 (E.D. Pa. 1977) (under Interstate Commerce Act). We, however, hold that there is no federal-question jurisdiction.

AFFIRMED.

Order of Dismissal.

United States District Court, Central District of California.

Thurston Motor Lines, Inc., a North Carolina corporation, Plaintiff, vs. Jordan K. Rand, Ltd., a California corporation, Defendant. Case No. CV 80 00865 AAH (Px).

Filed May 6, 1980.

Pursuant to an Order to Show Cause issued on the Court's own motion respecting the existence of federal jurisdiction in this case, an Order to Show Cause Hearing re Jurisdiction was held in this Court on April 21, 1980, and pursuant thereto, the Court makes the following order:

ORDER

The Court, having ordered the plaintiff herein to show cause why this Court should not dismiss this action for want of subject matter jurisdiction; and the Court having received and read the response of the plaintiff herein to the Order to Show Cause, and for good cause appearing:

IT IS ORDERED that this matter should be and hereby is dismissed for want of subject matter jurisdiction; 49 U.S.C. 10741(a), the statute involved, merely prevents discrimination in trucking charges; this statute does not provide for bill collection services by a Federal Court.

Dated: May 5, 1980.

/s/ .....

UNITED STATES DISTRICT JUDGE

APPENDIX B.

§ 1337.

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however*, That the district courts shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11) [49 USCS § 20(11)]), or section 219 of part II of such Act (49 U.S.C. 319 [49 USCS § 319]), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

49 U.S.C. § 317(b) (1977)
(Supplanted in 1978 by Recodification of Interstate Commerce Act)

(b) No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or any service in connection therewith between the points enumerated in such tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no such carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation in interstate or foreign commerce except such as are specified in its tariffs: Provided, That the provisions of sections 1(7) and 22 of part I [§§ 1(7) and 22 of this title] shall apply to common carriers by motor vehicles subject to this part [§§ 301-305, 306-327 of this title].

§ 10741.

(a) A common carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title [49 USCS §§ 1050 et seq.] may not charge or receive from a person a different compensation (by using a special rate, rebate, drawback, or another means) for a service rendered, or to be rendered, in transportation the carrier may perform under this subtitle than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances. A common carrier that charges or receives such a different compensation for that service unreasonably discriminates.

§ 10761.

(a) Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under Chapter 105 of this title [49 USCS §§1050 et seq.] shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter [49 USCS §§ 10761 et seq.]. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

Act Oct. 17, 1978, P.L. 95-473, § 3, 92 Stat. 1466, provided:

"(a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be con-

strued as making a substantive change in the laws replaced. Laws enacted after May 15, 1978, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency."

APPENDIX C.
Complaint for Freight Charges.

United States District Court, Central District of California.

Thurston Motor Lines, Inc., a North Carolina corporation, Jordan K. Rand, Ltd., a California corporation, Defendant. Case No. 80 00865.

Filed March 8, 1980.

Plaintiff alleges as follows:

1. This action arises under an Act of Congress regulating commerce, namely 49 USCA Section 10741(a) [formerly Section 217(b) of the Interstate Commerce Act, 49 USCA Section 317(b)]. This court has original jurisdiction of this cause pursuant to 28 USCA Section 1337.

2. Plaintiff is a corporation incorporated under the laws of the State of North Carolina, and authorized to do business in California.

3. The defendant is a corporation incorporated under the laws of the State of California, and doing business within this district.

4. The plaintiff is a common carrier by motor vehicle, authorized as such by the Interstate Commerce Commission, and is authorized to transport general commodities between places in the United States.

5. On or about May 8, 1979, the plaintiff performed transportation services for the defendant according to the abstract of freight bills set out in Exhibit "A" hereto.

6. Plaintiff has not recovered its full lawful charges for the aforesaid services as set forth in its tariffs on file with the Interstate Commerce Commission, and indeed has collected nothing at all.

7. The amount of plaintiff's lawful charges which remains uncollected aggregates $666.41.

8. The defendant has refused to pay the plaintiff its full lawful charges.

9. The plaintiff has been damaged in the foregoing premises in the amount of $666.41.

WHEREFORE, plaintiff prays:

1. For judgment against defendant in the amount of $666.41;

2. For interest from the date of each rendition of transportation service herein until payment;

3. For costs of suit herein; and

4. For such other and further relief as is just in the premises.

Dated: March 5, 1980.

GARFIELD, TEPPER & ASHWORTH,
A Professional Corporation
/s/ By Christopher Ashworth
CHRISTOPHER ASHWORTH
Attorneys for Plaintiff
THURSTON MOTOR LINES, INC.

EXHIBIT "A"

Date	Freight Bill	Amount
5/08/79	16-479230	$241.40
5/08/79	16-479238	424.01
		$666.41